



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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Fourth District, Los Angeles

JOHN CHIANG  
State Controller

KRISTINE CAZADD  
Executive Director

January 6, 2012

Dear Interested Party:

Staff has reviewed comments received in response to our December 1, 2011, interested parties meeting regarding the proposed amendments to the BOE procedure manuals regarding local tax reallocations. After considering the comments and information provided to date, staff is recommending additional amendments to the procedure manuals.

Enclosed is the *Second Discussion Paper* on this subject. This document provides the background, a discussion of the issue, and explains staff's recommendation in more detail.

A second interested parties meeting is scheduled for **January 18, 2012, at 10:00 a.m. in Room 122** to discuss this issue. If you are unable to attend the meeting but would like to provide input for discussion at the meeting, please feel free to write to me at the above address or send a fax to (916) 322-4530 before the January 18, 2012 meeting. If you are aware of other persons that may be interested in attending the meeting or presenting their comments, please feel free to provide them with a copy of the enclosed material and extend an invitation to the meeting. If you plan to attend the meeting or would like to participate via teleconference, please let staff know by contacting Ms. Lynn Whitaker at (916) 324-8483 or by e-mail at [Lynn.Whitaker@boe.ca.gov](mailto:Lynn.Whitaker@boe.ca.gov) prior to January 16, 2012. This will allow staff to make alternative arrangements should the expected attendance exceed the maximum capacity of Room 122 and to arrange for teleconferencing.

Any comments you may wish to submit subsequent to the January 18, 2012 meeting must be received by **February 2, 2012**. They should be submitted in writing to the above address. After considering all comments, staff will complete a formal issue paper on the proposed BOE procedure manuals for discussion at the **Business Taxes Committee meeting** scheduled for March 20, 2012. Copies of the formal issue paper will be mailed to you approximately ten days prior to this meeting. Your attendance at the March Business Taxes Committee meeting is welcomed. The meeting is scheduled for 10:00 a.m. in Room 121 at 450 N Street, Sacramento, California.

Please be aware that a copy of the material you submit may be provided to other interested parties. Therefore, please ensure your comments do not contain confidential information.

E-file now, find out how . . . [www.boe.ca.gov](http://www.boe.ca.gov)



We look forward to your comments and suggestions. Should you have any questions, please feel free to contact Ms. Kirsten Stark, Supervisor, Business Taxes Committee & Training Section at (916) 322-0849.

Sincerely,



Susanne Buehler, Chief  
Tax Policy Division  
Sales and Use Tax Department

SB:llw

Enclosures

cc: (all with enclosures)

Honorable Jerome E. Horton, Chairman, Fourth District  
Honorable Michelle Steel, Vice Chair, Third District  
Honorable Betty T. Yee, Member, First District (MIC 71)  
Senator George Runner (Ret.), Member, Second District (MIC 78)  
Honorable John Chiang, State Controller, c/o Ms. Marcy Jo Mandel

(Via E-mail)

Mr. Robert Thomas, Board Member's Office, Fourth District  
Mr. Neil Shah, Board Member's Office, Third District  
Mr. Tim Treichelt, Board Member's Office, Third District  
Mr. Alan LoFaso, Board Member's Office, First District  
Ms. Mengjun He, Board Member's Office, First District  
Mr. Lee Williams, Board Member's Office, Second District  
Ms. Natasha Ralston Ratcliff, State Controller's Office  
Ms. Kristine Cazadd  
Mr. Randy Ferris  
Mr. Jeffrey L. McGuire  
Mr. Jeff Vest  
Mr. Randy Ferris  
Mr. Bradley Heller  
Mr. Robert Tucker  
Mr. Cary Huxsol  
Mr. David Levine  
Ms. Trecia Nienow  
Mr. Todd Gilman  
Ms. Laureen Simpson  
Mr. Robert Ingenito Jr.  
Mr. Bill Benson  
Mr. Stephen Rudd

Mr. Kevin Hanks  
Mr. James Kuhl  
Mr. Geoffrey E. Lyle  
Ms. Kirsten Stark  
Ms. Lynn Whitaker  
Ms. Kim Rios

## **SECOND DISCUSSION PAPER**

### **Proposed procedure manual revisions regarding local tax reallocations**

Access to Records. CPPM 901.000 explains that the Local Revenue Allocation Unit (LRAU) is responsible for determining whether a person may view confidential records pursuant to Revenue and Taxation Code (RTC) section 7056(b). MuniServices believes that the language proposed by staff incorrectly limits the rights of jurisdictions and their consultants to view only taxpayer records of the jurisdiction the person represents. MuniServices explains that the Attorney General, in an opinion issued in December 1998, interpreted the statutory permission in section 7056 to be broader. (81 Ops.Cal.Atty.Gen. 379 (1998).) Specifically, that opinion No. 98-814 concludes that, “the duly authorized representative of a city may examine all of the sales and use tax records of the [State Board of Equalization] relating to the Board’s determination of the amount of local sales and use tax revenues to be distributed to the city.” MuniServices requests that staff’s language be stricken and that the Board allow the access rights as noted in the Attorney General’s opinion.

Staff has revised CPPM 901.010, 901.020, 901.030, and 901.040 to make the language of the sections consistent with the provisions of RTC section 7056(b) and the Attorney General opinion. The sections note that a properly designated person may inspect the records of the jurisdiction(s) that person represents. That is, the designated person will be given access to file information for taxpayers with retail sales locations in, or local or district tax allocated to, the particular jurisdiction(s) the person represents. This information includes the files of taxpayers reporting tax to that jurisdiction’s countywide pool or taxpayers reporting tax to the statewide pool since the jurisdiction shares in those taxes. Staff believes that this information constitutes the records relating to the Board’s determination of the amount of local sales and use tax revenues to be distributed to the jurisdiction.

Copies of Contracts as Pre-requisites for Data Access. In CPPM 901.020, 901.030, 901.040 and 905.010 staff inserted the requirement that a representative seeking access to taxpayer records on behalf of a jurisdiction include a copy of its contract with the jurisdiction before the representative may access the data. MuniServices states that while it is happy to continue to provide copies as a matter of courtesy, there is no authority for adding this requirement. In addition, MuniServices notes that there is no authority for staff to exercise the judgement that the contract meets the unspecified “administrative criteria” noted in CPPM 901.020.

Staff believes that the noted CPPM sections correctly reflect the provisions of RTC section 7056(b) and that in order to protect the confidentiality of taxpayer records, staff must verify (1) that the person requesting access to records has been designated by a resolution of the jurisdiction as a person authorized to view such confidential records on the jurisdiction’s behalf, and (2) unless the person so designated is an officer or employee of the jurisdiction, the resolution must certify that the designated person has an existing contract with the jurisdiction to examine BOE records pertaining to the ascertainment of the local or district tax to be collected on the jurisdiction’s behalf. Staff believes that unless BOE already has a copy of the contract on file, the representative seeking access must provide a copy.

Threshold for manually processing fund transfers. Staff proposes revising CPPM 905.020, Submitting Petitions, to explain that the minimum threshold for processing fund transfers is \$250 per quarter. The current \$50 per quarter threshold has been in place since 1990 and staff believes

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the amount should be increased to be consistent with the current threshold for processing a reallocation when a reallocation error is discovered in an audit. That threshold was raised from \$100 to \$250 per quarter in July 2010. Staff does not believe it is cost effective to continue to process changes of small amounts (excluding tax area code (TAC) changes, discussed below) and that staff time would be better spent investigating larger claims.

The exception to the proposed threshold would be for TAC changes<sup>1</sup>. In cases where the investigation results in a TAC change, BOE's computer system will continue to automatically process fund transfers for a majority of the occurrences for periods that have been funded within two quarters prior to the date of the TAC change regardless of whether the threshold was met in those quarters.

To assess the impact of staff's proposal, AG staff reviewed petitions submitted during the week of September 26-30, 2011. Of the 241 petitions, 36 (15%) either stated amounts that were below the \$250 threshold or did not state an amount, but the taxpayer reported total local tax less than the proposed \$250 threshold. AG staff currently receives an average of approximately 270 non-TAC petitions per month (approximately 1,624 petitions were received between 6/1/11 and 11/30/11;  $1,624 \div 6 = 270$ ). Accordingly, staff estimates that approximately 40 fewer petitions per month would be worked if staff's proposal were accepted. Estimating 8 hours of staff time to work each petition (actual average staff time per case is approximately 11 hours; staff is using 8 hours because cases with a lower threshold are generally simpler than other cases), AG would save 320 hours per month ( $40 \times 8$ ). This savings is nearly the equivalent to the work of two full time employees.

HdL disagrees with the proposal to raise the threshold to \$250 and suggests an alternative amount of \$100 per quarter. HdL explains that although it wants to encourage the efficient use of staff time, it is concerned about the cumulative effect of the \$250 per quarter amount proposed by staff. The San Joaquin Council of Governments also opposes the threshold increase. The council explains that it does not believe that BOE has unilateral authority to impose or alter such a threshold.

MuniServices also disagrees that the threshold should be raised to \$250 because the effect of multiple period corrections less than \$250 per quarter on a small city can be significant. In addition, to protect small jurisdictions MuniServices suggests there be a cumulative threshold of perhaps \$500. For example, if there is a multiple quarter adjustment and the total of all quarters is greater than \$500, then the reallocation needs to be done regardless of the individual quarterly amounts.

Date of Knowledge (DOK). Staff revised CPPM 905.040 to define the LRAU goldenrod form and delete the reference to form BOE-523, *Tax Return and/or Account Adjustment Notice*. The BOE-523 reference was added in a 2003 revision to make the section consistent with CPPM

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<sup>1</sup> Tax area codes are used by BOE to identify specific jurisdictions and to distribute local taxes to the appropriate jurisdictions. At times, BOE will have a correct address for a taxpayer, but an incorrect tax area code assigned to that address. Jurisdictions may file petitions requesting correction to the tax area code and reallocation of local taxes to the correct jurisdiction.

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335.040, Information for Preparation of Form BOE-523. LRAU staff explained that form BOE-523 is rarely used to document a DOK and in the instances when the BOE-523 is used, the instructions are explained in CPPM 335.040.

In regard to the DOK issue, MuniServices explains that it believes it is imperative that BOE staff be held to the same requirements for establishing a DOK as are the jurisdictions and their consultants. At a minimum this would include information required in Regulation 1807(a)(3)(E) & (G) and identification of the jurisdiction(s) involved. MuniServices recommends that the following text should be added to CPPM 905.040: “Such documentation must include contacting the taxpayer to establish that there is a basis for questioning the reported allocation, and the information required for a petition under Regulation 1807 that supports the probability of a misallocation.”

Staff disagrees with the proposed addition as it is not always necessary to contact the taxpayer to establish that there is a basis for the suspected misallocation. Staff has a variety of resources to support the probability that a misallocation has occurred such as registration information, prior returns, property tax records, and other confidential information available to BOE through information sharing with other government agencies. Staff believes that this information meets or exceeds the information required in Regulation 1807(a)(3)(E) & (G). Although staff may contact the taxpayer as part of its investigation, that contact is not necessary when staff has sufficient information to establish a basis for the suspected misallocation. Requiring staff to contact the taxpayer in all cases is an inefficient use of staff time and creates unnecessary requests of the taxpayer. Staff does not believe that such a requirement would improve the accuracy of BOE allocations; it would likely only delay correcting misallocations.

HdL explains that it has been its recent experience that BOE staff has a subjective view as to what constitutes a complete petition and/or evidence. To ensure that the standards for a date of knowledge and documentation are the same for BOE staff and any jurisdiction or consultant, HdL asks that the term “evidence” be defined in CPPM 905.010 as follows: “‘Evidence’ includes any documentation or information sufficient to support the probability that an erroneous allocation of local tax may have occurred.”

Staff does not believe it is necessary to add this definition as it is a redundant statement of the provisions of CPPM 905.040 which states, “A potential misallocation is ‘operationally documented’ when a BOE employee questions the allocation based on information contained in the Board files and provides sufficient factual data to support the probability that local tax has been erroneously allocated and distributed.” This data may include BOE audit reports or other electronic information in Board files which can be referenced and reviewed when needed.

Petition for Rehearing. CPPM 905.070 provides that to the extent not inconsistent with Regulation 1807, the Board hearing will be conducted in accordance with Chapter 5 of the BOE Rules for Tax Appeals ([Regulations 5510 – 5576](#)). The section provides an overview of the briefing process, but does not state that parties to the Board hearing may request a rehearing. At the suggestion of Mr. Neil Shah from Board Member Steel’s office, staff has revised CPPM

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905.070 to include the provisions of Regulation 5561, which explain the process for filing a Petition for Rehearing.

Notify jurisdictions prior to processing a large deallocation. When BOE completes an audit that results in a refund to the taxpayer, there is no notification to the jurisdiction that will be negatively impacted as a result of the refund. Although the results of such an audit are not subject to an appeal by a city or county, refunds can be large and result in large deallocations of local tax. Because jurisdictions depend on their local tax revenues to provide services, HdL suggests BOE provide the jurisdiction with a courtesy notice prior to processing the de-allocation. MuniServices explains that it supports this proposal and suggests that notification also be sent to the authorized representative of a jurisdiction.

In its submission, HdL proposes that Board staff implement a procedure that sends an advisement notice for any pending refund or audit de-allocation of \$10,000 or more in local tax.

Staff understands interested parties concerns about the impact of large de-allocations and is open to the idea of the proposal. However, to minimize the workload impact, staff proposes that notification be sent for any pending refund or audit de-allocation of \$100,000 in local tax. Staff further proposes that jurisdictions be notified when the item is placed on the Public Agenda Notice for the Board Meeting when the refund will be placed on calendar for approval<sup>2</sup>. Staff is also open to sending a copy of this notification to the jurisdiction's authorized representative.

Forms BOE-549-L and BOE-549-S. These forms are used to file petitions for local tax reallocations. In the first discussion paper, staff discussed whether it would be more efficient to process petitions by limiting the use of the short form, BOE-549-S, TAC changes and use form BOE-549-L for all other petitions.

At the interested parties meeting and in its submission, HdL clarifies that it uses the BOE-549-S form exclusively and segregates its TAC petitions prior to submitting. MuniServices also explains that it segregates TAC petitions. Accordingly, staff agrees that limiting the use of the BOE-549-S form would not improve processing efficiency. As noted in the first discussion paper, staff is working on revisions to the BOE-549 forms (adding fields for email addresses, additional contact information, etc.). In its submission, HdL recommends several revisions for the BOE-549 forms which have been provided to AG for its consideration when the forms are revised. MuniServices expresses its concern that any new fields be optional and should not attempt to expand the requirements for a petition beyond those required in Regulation 1807.

Proposed revisions for the AG training materials and APMG. In addition to the proposed CPPM procedures, staff will revise the AG staff training materials to:

- Formalize the guidelines for contacting taxpayers, explaining when the AG auditor should discuss a case with the AG lead and/or the AG supervisor, and determine how to

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<sup>2</sup> BOE Rules for Tax Appeals Regulation 5237 provides that if Board staff determines that a refund in excess of \$100,000 (total tax) should be granted, the recommendation for the proposed refund must be submitted to the Board for approval.

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proceed on cases where the taxpayer is uncooperative in providing records or when records do not exist. Staff will also explain that it may be beneficial to contact the local tax consultant to determine how to proceed with an investigation when the investigation is stalled.

- Add a discussion about tax rebate agreements: what they are, what types of agreements are encountered, where records of agreements can be found, and how such agreements should be viewed in light of the entire investigation.
- Add a discussion about what to do when there is a discrepancy in the information provided by the taxpayer's local contact and the taxpayer's headquarters representatives.
- Instruct AG staff to provide a list of questions and/or specific information the field staff needs to ask and/or obtain from the taxpayer when a case is referred to a field office for investigation.

In addition, interested parties asked that the typical questions AG auditors should ask when verifying a petition be placed in the AG training materials. Although staff does not want to include a checklist of questions to be asked on investigations, staff will include sample questions to illustrate key points. For example, the AG training materials explain that for sales tax to apply there must be in-state participation by a business location of the seller and the sale must occur in California. The training materials can be expanded to explain that to determine if there was in-state participation by a business location of the seller, the staff member could ask questions such as, "Does the business have salespeople that visit customers in person? Do the salespeople operate out of a sales office, or from their homes?"

In its submission, MuniServices suggests that the AG training materials include language requiring the AG forward to the taxpayer questions MuniServices submits to AG in writing. While staff is willing to work with consultants to determine the correct allocation of tax, staff believes it should be free to conduct its investigation independently. The submitted petition should include all of the information the petitioner has discovered in the petitioner's investigation of the suspected misallocation. If a jurisdiction has tried, but been unable to obtain answers to specific questions from the taxpayer, the jurisdiction may send those questions to staff to consider in conducting our investigation.

With regard to procedures when a petition is sent to a field office for investigation, staff will clarify in the APMG that if an account has been selected for audit, but not yet assigned to an auditor, the account will be assigned as soon as possible and addressed similar to a Claim for Refund in the queue of pending audit assignments. AG staff has also established a process to follow up with the audit supervisor, District Principal Auditor, and District Administrator when the investigation is referred to a field office.

New BOE website links. Rather than create and maintain a separate manual for local tax procedures, staff has decided to keep the procedures housed in their current locations. However, we have added new links on the BOE local tax webpages to make the information easier to find. The Local Governments page <http://www.boe.ca.gov/info/localgov.htm> (available from any BOE

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webpage, left side bar link titled, “Local Government Services”) provides cities and counties staff contact information for a variety of BOE services. The Local & District Taxes page <http://www.boe.ca.gov/sutax/localdist.htm#info> provides general information about local and district taxes as well as detailed information about distributions, allocation schedules, and special allocation procedures. Staff has added a link from the Local Governments page to the Local & District Taxes page to make the detailed information easier to find. In addition, staff has added links on the Local & District Taxes page to CPPM chapter 5 (explaining how allocation schedules are assigned to taxpayers) and CPPM chapter 9 (explaining procedures for the jurisdictions review of BOE records and procedures for local tax reallocation petitions).

#### **VI. Summary**

Interested parties are welcome to submit comments or suggestions on the issues discussed in this paper, and are invited to participate in the interested parties meeting scheduled for January 18, 2012.

Prepared by the Tax Policy Division, Sales and Use Tax Department

Current as of 01/05/2012



For ease of review, this exhibit shows changes tracked from the initial discussion paper.

## LOCAL TAXING JURISDICTION REVIEW OF BOARD OF EQUALIZATION RECORDS

901.000

### BACKGROUND

901.010

Revenue and Taxation Code (RTC) section 7056(b) allows authorized officers, employees, and designated persons ~~representatives~~ of jurisdictions imposing taxes under the Uniform Local Sales and Use Tax Law (RTC section 7200, et seq.) and jurisdictions imposing taxes under the Transactions and Use Tax Law (RTC section 7251, et seq.) (commonly known as "district taxes"), to view the confidential taxpayer records of the Board of Equalization (BOE) pertaining to the ascertainment of those sales or transactions and use taxes to be collected for the jurisdictions they represent. For an authorized officer, employee, or designated person representing a jurisdiction to gain such access to BOE's confidential taxpayer records, the legislative body of the jurisdiction must adopt a resolution designating the representative as a person authorized to view such confidential taxpayer records on the jurisdiction's behalf. Unless the person so designated is an authorized officer or employee of the jurisdiction, the resolution must certify that the designated person has an existing contract with the jurisdiction to examine taxpayer records of the Board of Equalization (BOE) pertaining to the ascertainment of the local or district sales or transactions and use taxes to be collected by the BOE on the jurisdiction's behalf. The resolution must also certify that the contract between the jurisdiction and the person designated by the resolution has met all of the following conditions and, pursuant to that contract:

1. May be required by the contract to disclose information contained or derived from those confidential taxpayer records only to an officer or employee of the jurisdiction who is also authorized by the resolution to examine the records;
2. Is prohibited by the contract from performing consulting services for a retailer during the term of that contract; and
3. Is prohibited by the contract from retaining the information contained in or derived from the confidential taxpayer records after that contract has expired.

RTC section 7056(b)(2) further provides that information obtained by examination of BOE's ~~the confidential taxpayer records~~ may be used only for purposes related to the collection of the local or district tax pursuant to the contract, or for purposes related to other governmental functions of the jurisdiction as set forth in the jurisdiction's resolution.

### RESOLUTIONS INFORMATION SUBJECT TO DISCLOSURE

901.020

The Local Revenue Allocation Unit (LRAU) is responsible for determining whether a particular jurisdiction has adopted a valid resolution authorizing an employee, officer, or ~~other designated~~ authorized officer or employee of the jurisdiction or designated person may only ~~inspect taxpayer~~ examine all of the sales or transactions and use tax records of the BOE pertaining to the ascertainment of those sales or transactions and use taxes to be collected for the jurisdiction ~~(s)~~ that person represents. ~~that is, the person will~~ This means the duly authorized officer, employee or designated person of that jurisdiction will be given access to file information including: only ~~for (1)~~ taxpayers with retail sales locations within the boundaries of the jurisdiction, or (2) taxpayers whose local or district tax was allocated to the jurisdiction by BOE. ~~the particular~~

Comment [LLW1]: MuniServices commented that the language proposed by staff in 901.020 and 901.040 incorrectly limits the rights of jurisdictions and their consultants to view records.

Staff revised 901.010, 901.020, 901.030, and 901.040 to make the language consistent with RTC section 7056(b).

Comment [LLW2]: Added at the suggestion of MuniServices for clarification.

~~jurisdiction(s) the person represents. Such information includes files of (3) taxpayers reporting tax to that jurisdiction's countywide pool, and (4) or taxpayers reporting tax to the statewide pool. The jurisdiction is entitled to information from the countywide and statewide pools because since the jurisdiction shares in those taxes. (note, however, a district is not entitled to taxpayer information from the that there is no statewide pool, because the district does not share in this tax pool as provided for taxes imposed under by~~ the Transactions and Use Tax Law). A representative of a district encompassing more than one county (such as the Bay Area Rapid Transit District) may obtain the countywide pool data for each county located within that district.

The Allocation Group (AG) and field offices, before allowing a person access to confidential taxpayer information, must verify with LRAU that a person seeking access to confidential ~~taxpayer~~ records on behalf of a jurisdiction imposing local or district tax is authorized by a valid resolution of that jurisdiction. If the person is a designated person of the jurisdiction, the AG and field offices must also verify that the designated person has an ~~and~~ existing contract with that jurisdiction. s, as applicable, prior to allowing that person access to confidential taxpayer records. This verification may be done by checking the current LRAU Resolution Log, or by telephone or email. If LRAU does not have a copy of the required authorizing document(s) on file, the person must provide a certified copy of such document(s), which should be faxed or scanned and emailed by AG or the field office to LRAU. LRAU will verify that the document(s) meets all the administrative criteria required to authorize the person to view confidential ~~taxpayer~~ records. If the documents do *not* meet the criteria, the person must be advised that, pending receipt of the applicable document(s), access to confidential file material will be denied.

**Comment [LLW3]:** MuniServices commented there is no authority requiring the representative to provide this contract.

Staff response: Although not RTC section 7056 does not specifically require jurisdictions to provide a copy of the contract, staff believes it must be provided a copy of the contract to verify the designated person has an existing contract with the jurisdiction.

Questions regarding the validity of resolutions, contracts, or other RTC section 7056 authorization issues should be directed to LRAU.

#### **REQUEST TO REVIEW TAXPAYER SALES OR TRANSACTIONS AND USE TAX RECORDS MAINTAINED BY HEADQUARTERS 901.030**

Requests by jurisdiction representatives to review taxpayer records should be forwarded to AG for processing. AG will verify that a valid resolution and contract ~~is~~ are on file and will order the requested files from the Taxpayer Records Unit for review. AG will then review each file to locate and remove any information not subject to disclosure prior to presenting the file to the requester for review.

The requester will be required to complete a Form BOE-755, *Authorized Examination of Board Records*, for each file reviewed. The completed BOE-755 should detail the specific documents reviewed, including the time period of returns or other documents. Each completed BOE-755 will then be included in the taxpayer's file.

AG will provide space for the requester's examination of files in an observable area. Upon request, AG will also make copies of file material at no charge.

#### **REQUEST FOR TAXPAYER INFORMATION TO REVIEW SALES OR TRANSACTIONS AND USE TAX RECORDS MAINTAINED AT A FIELD OFFICE 901.040**

Requests for records maintained at the field office should be forwarded to either the District Principal Auditor or the District Principal Compliance Supervisor, who will confirm with LRAU that a valid resolution and contract ~~is~~ are on file. Audit or compliance staff, when contacted directly by a person seeking access to taxpayer records on a jurisdiction's behalf, will inform and

consult with the District Principal Auditor or District Principal Compliance Supervisor before acting on the request.

If the request concerns the examination of a field office file and such a file exists, a review of that file will be made to locate and remove any material not subject to disclosure prior to presenting the file to the requester for review. The requester will be given access only to the field office files of taxpayers that pertain to the ascertainment of those sales or transactions and use taxes to be collected for the jurisdiction they are determined to represent with retail sales locations in, or for which the retailer allocates local or district tax to, the jurisdiction on behalf of whom the requester is authorized to view confidential taxpayer information. Care will be taken to ensure that the requester is given access only to taxpayer records that pertain to the authorizing jurisdiction.

The requester will complete a BOE-755 for each file reviewed. The completed form should detail the specific documents reviewed and include the time period of tax returns and/or dates of other documents.

The field office will provide space for the examination of files by the requester in an observable area. Upon request, the field office will also make copies of file material at no charge.

The original BOE-755, completed at the field office, will be sent to the taxpayer's file maintained by headquarters. A copy of the form may be included in the taxpayer's field office file.

#### **INFORMATION NOT SUBJECT TO DISCLOSURE**

**901.050**

Information not subject to disclosure includes:

1. Memoranda to or from the Legal Department marked "Confidential: Attorney — Client Privilege." (See explanation below regarding documents incorrectly marked, or not marked, as confidential.)
2. Memoranda directly related to litigation in which the BOE is a party, including refund and collection actions.
3. Memoranda to or from the Attorney General's office when the Attorney General is acting as the BOE's attorney.
4. Documents which relate to an ongoing criminal investigation.
5. Federal or state income tax returns or any item marked as Federal Tax Information.
6. Any information in the taxpayer's file that does not pertain to that taxpayer.

Internal memoranda, other than those specified above, are normally not to be regarded as confidential unless so marked. However, some documents may not be appropriately marked as confidential. If you question whether a document has been appropriately marked as confidential, or believe that a document should be so marked, contact the author of the document, the BOE's Disclosure Officer, or the Legal Department for guidance.

#### **REQUEST FOR TAXPAYER RECORDS IN IRIS AND ACMS**

**901.060**

There are no circumstances under which a jurisdiction's representative may be given unrestricted or unsupervised access to the IRIS or ACMS systems. In order to request records concerning specific taxpayer payments, the requester must complete a BOE-755, for each IRIS or ACMS account and specify the documents or confidential information being requested.

When completed properly, BOE-755 meets the accounting requirements of the Information Practices Act, Civil Code section 1798.25.

Each BOE-755 must be verified to ensure that the requester is authorized to receive information pursuant to the Board of Equalization Administrative Manual sections 7207 – 7214 or RTC section 7056. The requestor must sign and date the BOE-755.

~~Using IRIS or ACMS~~ If a request is made, a BOE employee will access the requested information, e.g., 2QXX local tax breakdown, and ~~the representative can then record the amount of local tax allocated to that particular jurisdiction print out the information for the consultant, or other information~~ as specified on the BOE-755.

**Comment [LLW4]:** MuniServices asked why the current manual text providing that BOE employees will print out the information was revised to "the representative can then record the amount".

Staff restored the current provisions.

## PROCESS FOR REVIEWING LOCAL TAX REALLOCATION PETITIONS

905.000

Regulation 1828, [Petitions for Distribution or Redistribution of Transactions and Use Tax](#), applies to appeals [from petitions](#) of [suspected improper](#) distributions [of district tax](#) under the Transactions and Use Tax Law. ~~and is~~ [The provisions of Regulation 1828 are](#) essentially identical to Regulation 1807; for convenience, this CPPM chapter only refers to Regulation 1807.

## DEFINITIONS

905.010

### Petition

A "petition" is a written request or inquiry from a jurisdiction for investigation of suspected [of local tax or district tax](#) submitted to AG, except for a submission under RTC section 6066.3. (See CPPM 905.090 for RTC section 6066.3 submissions.) The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:

1. Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.
2. Taxpayer's permit number or a notation stating "No permit number."
3. Complete business address of the taxpayer.
4. Complete description of taxpayer's business activity or activities.
5. Specific reasons and evidence why the taxpayer's allocation is questioned. If the petition alleges that the location of the sale is an unregistered location, evidence that the unregistered location is a selling location or is a place of business, as defined by Regulation 1802, *Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes*. If the petition alleges that the tax for a sale shipped from an out-of-state location was actually sales tax and not use tax, evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.
6. Name, title, and phone number of the contact person.
7. The tax reporting periods involved.

"Petition" also includes an appeal by a jurisdiction based on a notification from LRAU that local taxes or district taxes previously allocated to it were misallocated and will be reallocated. If LRAU has a valid resolution and contract on file authorizing a representative of the jurisdiction to view confidential taxpayer information under RTC section 7056, LRAU will also send this notification to that representative.

A jurisdiction receiving such a LRAU notification may object to that notification by submitting a written petition to the AG supervisor within 30 days of the date of mailing of the notification or within a period of extension described below. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification by LRAU is considered final as to the jurisdiction so notified.

**Comment [LLW5]:** MuniServices questioned why "misallocation" replaced the previous "improper distribution."

Staff response: 905.010 was revised to be consistent with the language of Regulation 1807 as revised in 2008. However, since Regulation 1828 does refer to "improper distribution" staff has revised 905.000 for clarification.

The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from LRAU. Such a request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days and must be received by LRAU within 30 days of the date of mailing of its notification. Within five days of receipt of the request, LRAU will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of LRAU is further extended to the 60<sup>th</sup> day after the date of mailing of the notification of misallocation.

#### **Substantially Affected Jurisdiction**

A "substantially affected jurisdiction" is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly allocation (generally determined with reference to the prior four calendar quarters) or of \$50,000 or more, and includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools. How jurisdictions are identified as substantially affected based on disputed pool allocations is discussed below.

#### **Notified Jurisdiction**

A "notified jurisdiction" is a jurisdiction that has been notified as a substantially affected jurisdiction. Once a jurisdiction is properly notified as a substantially affected jurisdiction, it maintains its status as a notified jurisdiction throughout the appeals process.

Note that the reallocation period may extend to the current day if the subject taxpayer remains engaged in the same activities covered by the petition, in which case, for purposes of this calculation, the reallocation period is regarded as extending through the end of the last quarter for which a return is filed prior to the finality date of the appeal. In such circumstances, the longer the appeals process takes to resolve, the more local tax will be at issue. Thus, a jurisdiction that is not substantially affected at one point in the appeals process can later become a substantially affected jurisdiction as the petition is appealed and time passes. For example, a jurisdiction that is not substantially affected when AG issues its supplemental decision may be substantially affected, and thus notified, at the time when the Decision and Recommendation is issued. Similarly, if a hearing is timely requested, a jurisdiction that is not notified as a substantially affected jurisdiction when the oral hearing notice is issued may later become substantially affected because the oral hearing is postponed or rescheduled and thus requires notification. Further, a jurisdiction not previously notified as substantially affected, will be notified if it becomes substantially affected upon discovery of an error in the original notice, or upon granting a petition for rehearing when the notice for rehearing is issued.

For a reallocation that would be made of amounts originally allocated through a countywide pool, the calculation of whether a jurisdiction must be notified as a substantially affected jurisdiction is not based on the actual amount that was originally allocated to that jurisdiction through its countywide pool, or on the amount that may be reallocated if the ultimate decision is to reallocate funds, but rather is based on the "Pool Notification Threshold List" maintained and updated annually by LRAU. This list will be posted to the BOE's website each calendar year ~~when as soon as~~ it is available.

**Comment [LLW6]:** Added at the suggestion of MuniServices.

This document lists, for each jurisdiction, the amount of countywide pool funds whose reallocation would result in the loss of sufficient revenue by that jurisdiction for it to constitute a substantially affected jurisdiction. The calculation is based on the average percentage of the countywide pool the jurisdiction received for the four calendar quarters of the year prior to the year of the list (e.g., the 2011 list is based on the four calendar quarters of 2010). That percentage is then used to determine the specific amount of countywide pool funds whose reallocation would result in a decrease in revenue to the jurisdiction of \$50,000-~~00~~, and the specific amount of countywide pool funds whose reallocation would result in a decrease in revenue to the jurisdiction of 5 percent or more of its average quarterly allocation (also based on the four calendar quarters prior to the year of the list). The lower of these two figures is the dollar amount of pool funds whose reallocation would result in that jurisdiction's being substantially affected, and is the amount used for that jurisdiction in establishing the Pool Notification Threshold List.

The first step in determining which jurisdictions must be notified because they are substantially affected by a decision is to determine the amount of funds from the applicable countywide pool that the decision recommends be reallocated. If ~~this the~~ amount to be reallocated is equal to or ~~less greater~~ than the threshold amount, that jurisdiction will be substantially affected by the decision and must be notified. For example, if AG issues a decision finding that a petition should be granted reallocating \$1,070,000-~~00~~ of County A's pool funds, it would notify all jurisdictions sharing in the countywide pool of County A whose threshold amount reflected on the applicable list is equal to or less than \$1,070,000-~~00~~. Thus, a jurisdiction with a pool threshold amount of \$2,000,000 would not be notified, but a jurisdiction with a pool threshold amount of \$1,000,000 would be notified. (The same analysis is done to decide who must be notified of an appeals conference or Board hearing, except the comparison is to the amount of pool funds that would be reallocated if the petition is granted or denied.)

**Comment [LLW7]:** MuniServices commented that this should be "greater."

Staff response: Staff agreed and added an additional sentence following the example to clarify.

Thereafter, if a decision to reallocate funds originally allocated through a countywide pool becomes final, the actual amount reallocated will be based on the percentage of the pool that each pool participant receives for the quarter prior to the quarter in which the reallocation is made. Upon request, the petitioner or any substantially affected jurisdiction will be furnished copies of the calculations made to determine the parties to be notified.

## SUBMITTING PETITIONS

905.020

To expedite processing, requests should be submitted by the petitioning jurisdiction or its authorized representative, who is submitting on behalf of the jurisdiction, on Form BOE-549-L, *Claimed Incorrect Distribution of Local Tax - Long Form*, or Form BOE-549-S, *Claimed Incorrect Distribution of Local Tax - Short Form*. Form BOE 549-L is used for complex local tax reallocation issues such as sales tax vs. use tax, place of sale, or other complex issues where more information is needed. Form BOE 549-S is used for simple tax reallocation questions having to do with taxpayers' business addresses or other less complex matters. These forms are available on the BOE website. The minimum threshold for processing fund transfers is ~~\$250~~ per quarter.

**Comment [LLW8]:** HdL recommends that "Evidence" be added and defined to include any documentation or information sufficient to support the probability that an erroneous allocation of local tax may have occurred.

Staff response: Staff does not believe it is necessary to add this definition; staff believes it is redundant of the provisions of 905.040.

**Comment [LLW9]:** Added at the suggestion of MuniServices.

Staff response: This language was not included in Regulation 1807 because it was thought to be unnecessary. However, staff agrees to add clarification here.

**Comment [LLW10]:** MuniServices believes the threshold should remain \$50 and proposed a cumulative threshold of \$500.

HdL suggested an alternative increase of \$100.

The San Joaquin Council of Governments also opposes a change in the current \$50 threshold.

The exception to these threshold amounts is for tax area code (TAC) changes. When there is a change to the TAC assigned to a taxpayer's address, BOE's computer system will automatically process fund transfers for periods that have been funded within two quarters prior to the date of the change regardless of whether the threshold was met in those quarters.



All petitions are to be sent directly to headquarters, rather than to a field office. Petitions should be mailed to:

Allocation Group  
Board of Equalization  
450 N Street, MIC 39  
PO Box 942879  
Sacramento, CA 94279-0039

(For submissions under RTC section 6066.3, see CPPM 905.090.)

### ACKNOWLEDGMENT OF PETITION

905.030

AG will acknowledge petitions within 30 calendar days of receipt by the Board. Petitions will be logged in by permit number (if any), jurisdiction (if known), and representative (if any).

Within 30 days of the acknowledgement, AG will review the petition for completeness. If the submission does not contain the elements identified in Regulation 1807(a)(3), the submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from AG requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements in Regulation 1807(a)(3), then the date of receipt of the original submission will be the date it is regarded as a valid petition. In the event that a submission is not perfected within this 30 day period, the submission will not qualify as a valid petition.

**Comment [LLW11]:** MuniServices recommended that if the petition is not sent back within 30 days, the petition be deemed to be accepted for purposes of establishing a DOK.

Staff response: Staff would like to discuss this issue further with interested parties. Although staff is willing to adhere to specific timelines, staff does not believe a petition can be accepted as valid by default.

### DATE OF KNOWLEDGE

905.040

Unless an earlier date is operationally documented by the BOE, the date AG receives a valid petition is the "date of knowledge," which is a date that is critical for determining the beginning of the allocation period. (RTC section 7209 (statute of limitations for these petitions)). Where a misallocation that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge remains the date AG received the valid petition.

A potential misallocation is "operationally documented" when a BOE employee questions the allocation based on information contained in the Board files *and* provides sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. In other words, a date of knowledge is operationally documented when two conditions are satisfied: (1) an employee of the Board discovers factual information sufficient to support the probability that an erroneous allocation of local tax may have occurred, and (2) the Board employee questions and documents that suspected erroneous allocation. The operationally documented date of knowledge will be the date the employee documents the date on which the distribution was questioned, such as the date ~~it the employee issues completes a BOE-523 form, Tax Return and/or Account Adjustment Notice, (see CPPM 335.000) or a BOE-75 form.~~ LRAU Goldenrod and references the data that supports the suspected misallocation. An LRAU goldenrod is an internal form used by LRAU to record questionable local and/or district tax distributions, fund transfer approvals, and reallocation notifications.

**Comment [LLW12]:** MuniServices recommends adding: "Such documentation must include contacting the taxpayer to establish that there is a basis for questioning the reported allocation, and the information required for a petition under Regulation 1807 that supports the probability of a misallocation."

Staff Response: Staff disagrees with the proposed addition as it is not always necessary to contact the taxpayer to establish that there is a basis for the suspected misallocation.

If a petition regarding suspected improper distribution of local tax under the procedures set forth above and a submission under RTC section 6066.3 are both filed for the same alleged improper distribution, only the earliest submission will be processed as a valid appeal, with its date of



receipt establishing the date of knowledge for the alleged improper distribution (unless there is an even earlier operationally documented date of knowledge).

## REVIEW BY SALES AND USE TAX DEPARTMENT AG

905.050

### Investigation

Petitions will be coded for type of alleged misallocation and assigned to an auditor in AG. Assignments may coincide with investigations handled by LRAU. (Note that for assignments coinciding with investigations handled by LRAU, the LRAU Supervisor may be consulted.)

AG staff will use form the BOE-414-Z, *Assignment Activity History*, to record contacts, requests, staff actions, and other relevant events. For example, the BOE-414-Z should be used to record:

- Appointments made – record date, time, and purpose of the appointment.
- Appointments cancelled or rescheduled – record who requested the change and the reason for the request.
- Correspondence – record all letters and other materials given to and received from jurisdictions and taxpayers.
- Emails – record email contacts including a summary of the discussion or agreement; emails should not be copied directly into the BOE-414-Z.
- Record requests – record all requests for records from taxpayers including the deadline given (usually 45 days).
- Referral to field office – record date referred and appropriate follow-up date (30 days for in-state field offices and 60 days for out-of-state field offices).

The auditor will attempt to resolve all petitions through communication with the taxpayers including contacting the "contact person" identified in the petition or other such taxpayer personnel. If for some reason a satisfactory response cannot be obtained, the petition may be referred to the appropriate field office for action. The petition will be discussed with the AG supervisor and the petitioner will be notified before a petition is referred to a field office. Referrals to the field office will include specific instructions to field office staff for the information sought. A copy of any correspondence will be sent to the petitioner.

The AG lead and AG supervisor will review the status of petitions as the petitions age. The AG lead will follow-up monthly with staff for any assignments aged 180 - 270 days. The AG supervisor will follow up on assignments aged greater than 270 days.

### Initial Decision

After a petition has been investigated, AG will prepare a written decision to grant the petition, deny the petition, or grant the petition in part and deny it in part. The written decision will include the basis for that decision and the date of knowledge, and if that date is other than the date the petition was received, will include the basis for that date. AG will send its decision to the petitioner and, if applicable, any substantially affected jurisdiction.

If a petition is denied, in whole or in part, the petitioner may submit to AG a written objection to the decision, and if the petition is granted, in whole or in part, a notified jurisdiction may likewise submit to AG a written objection to the decision. Any such objection must be submitted within 30 days of the date of mailing of AG's decision, or within a period of extension as explained below.

**Comment [LLW13]:** MuniServices believes that follow up should occur before the end of the six month period, such as at 150 days.

**Staff Response:** Staff believes the 180 day timeline is appropriate and is consistent with the provisions of 1807(b)(3).

If no timely objection is submitted, the AG decision is final as to the petitioner and all notified jurisdictions.

**Delayed Investigation – Petitioner’s Recourse**

If AG does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that AG issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, AG will issue its decision based on the information in its possession.

**Second Review by AG**

If the petitioner or a notified jurisdiction submits a timely written objection to the AG decision, AG will consider the objection and issue a written supplemental decision to grant the objection, deny the objection, or grant the objection in part and deny it in part, along with the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

The petitioner or any notified jurisdiction may appeal the AG supplemental decision by submitting a written objection to AG within 30 days of the date of mailing of the supplemental decision (or within a period of extension as explained below). Such an objection must state the basis for the objecting jurisdiction’s disagreement with the supplemental decision and include all additional information in its possession that supports its position. If the petitioner or any notified jurisdiction timely appeals the AG supplemental decision, AG will prepare the file and forward it to the Appeals Division within 30 days of receipt of the objection.

If no timely objection is submitted, the AG supplemental decision is final as to the petitioner and all notified jurisdictions.

**Delayed Investigation – Petitioner’s and Notified Jurisdictions’ Recourse**

If AG does not issue a supplemental decision within three months of the date it receives a timely objection to the AG decision, the petitioner or any notified jurisdiction may request that AG issue its supplemental decision without regard to the status of its investigation. Within 60 days of receiving such a request, AG will issue its supplemental decision based on the information in its possession.

**Extensions of time**

The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection to either a decision or supplemental decision issued by AG. The request must:

1. Provide a reasonable explanation for the requesting jurisdiction’s inability to submit its objection within 30 days,
2. Be copied to all other jurisdictions to whom AG mailed a copy of its decision or supplemental decision, and
3. Be received by AG within 30 days of the date of the decision or supplemental decision.

Within five business days of receipt of the request, AG will mail notification to the petitioner and all notified jurisdictions whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection is extended to the

60<sup>th</sup> day after the date of the mailing of AG's decision or supplemental decision. If the request for extension is denied, the time for the petitioner and any notified jurisdiction to file an objection AG's decision or supplemental decision is extended to 10 days after the mailing of the notice denying the extension.

## REVIEW BY APPEALS DIVISION

905.060

If a timely objection to the supplemental decision has been submitted, AG will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. Where AG has forwarded a file to the Appeals Division for the holding of an appeals conference, tThe Appeals Division will coordinate with the Case Management Section of the Board Proceedings Division, who will schedule the appeals conference and mail notice of that conference to the petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted or denied, and AG. Generally, appeals conferences are scheduled in the order received by the Appeals Division.

**Comment [LLW14]:** Clarified to include the provisions of 1807(c)(2).

## Return of Petition to AG

The petitioner or any notified jurisdiction may continue to discuss the dispute with AG staff after the petition is referred to the Appeals Division. If, as a result of such discussions or otherwise, AG decides its supplemental decision was incorrect or that further investigation is warranted, it will so notify the Appeals Division, the petitioner, and all notified jurisdictions.

If AG sends such notice to the Appeals Division no later than 30 days prior to the appeals conference, the Appeals Division will suspend its review and will return the petition to AG. Thereafter, AG will issue a second supplemental decision, or will return the petition to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

**Comment [LLW15]:** MuniServices asked if jurisdictions will have an opportunity to submit a response to such a report. (Similar language in the following paragraph.)

If AG sends such notice to the Appeals Division less than 30 days prior to the appeals conference, the Appeals Division will decide whether the petition should be returned to AG or should remain with the Appeals Division, and will notify the parties accordingly. If the petition is returned to AG, AG will thereafter issue a second supplemental decision, or will return the petition to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

**Staff Response:** The provisions of this section are found in Regulation 1807(c)(2)(B) and (C). If AG does not issue a second supplemental decision, the information included in the report will be shared with jurisdictions; jurisdictions may respond to the information in their pre-conference submissions.

Where AG issues a second supplemental decision, it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection within 30 days of the date of mailing of that supplemental decision, or within a period of authorized extension. If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.

## Appeals Conference

The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and AG have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. See Regulation 1807(c)(3) for procedures for local tax appeals.

### **Decision and Recommendation**

The appeals conference holder will notify the conference participants when the final submission of information authorized by Regulation 1807(c)(3) is received following the appeals conference. Within 90 days after the final submission, the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law, and the conclusions of the Appeals Division. The ~~Board's~~ BOE's Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and AG. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to AG.

### **Request for Board Hearing**

The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing within 60 days of the date of mailing of the D&R. Such a request must state the basis for the jurisdiction's<sup>5</sup> disagreement with the D&R and include all additional information in its possession that supports its position.

### **Request for Reconsideration**

The petitioner, any notified jurisdiction, or AG may also appeal the D&R by submitting a written request for reconsideration (RFR) to the Appeals Division within the same 60-day period during which a timely request for hearing may be submitted. If an RFR is submitted within this period, the Appeals Division will issue a Supplemental D&R (SD&R) to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. Where a Board hearing has been timely requested and an RFR is submitted more than 60 days after the mailing of the D&R, the Appeals Division will determine whether it should issue an SD&R in response. If not, a Board hearing will be held pursuant to the prior request.

### **Supplemental Decision and Recommendation**

Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by AG as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R. However, in the rare circumstance where the members of the Board at an oral hearing request that the Appeals Division hold another conference, the Appeals Division will issue an SD&R.

Where the Appeals Division issues an SD&R (whether because an RFR was filed within 60 days of the mailing of the D&R or a prior SD&R or because the Appeals Division decides issuance of an SD&R is appropriate in response to a "late" RFR or on its own initiative), a copy of the SD&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to AG. The procedures for appealing the SD&R (i.e., requesting a Board hearing or reconsideration) are the same as those for appealing a D&R.

### **Finality of D&R or SD&R**

If no RFR or request for Board hearing is submitted within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R (as applicable) is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues a SD&R prior to the time AG acts on the recommendation in the D&R or prior SD&R as a final matter.

## REVIEW BY BOARD MEMBERS

905.070

If the petitioner or any notified jurisdiction submits to the Board Proceedings Division a timely written request for Board hearing (i.e., within 60 days of the date of mailing of the D&R or SD&R) the Board Proceedings Division will notify AG, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.

AG, the petitioner, and all jurisdictions notified of the Board hearing are parties to the Board hearing. The taxpayer, however, is not a "party" to the Board hearing unless it actively participates in the hearing process by either filing a brief or making a presentation at the hearing.

To the extent not inconsistent with Regulation 1807, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Regulations 5510 - 5576). Briefs may be submitted for the hearing in accordance with the Rules for Tax Appeals (Regulations 5270 - 5271). (Note that no party to the hearing is required to file a brief; submission of a brief is entirely optional.) The party who requested the Board hearing may file an opening brief with the Chief of Board Proceedings no later than 55 days before the Board hearing. The brief must contain a statement of the facts and issues and a discussion of applicable legal authorities. When an opening brief is filed, the other party may file a reply brief with the Chief of Board Proceedings no later than 35 days before the Board hearing.

Only the jurisdiction(s) requesting the hearing can file an opening brief, and AG and any opposing jurisdiction(s) may file a reply brief only if the jurisdiction requesting the hearing or taxpayer actually files an opening brief. Since a taxpayer is specifically authorized by Regulation 1807, subdivision (d)(3), to become a party by filing a brief, a taxpayer may file a brief even though it is never the party who requested a hearing in reallocation matters and even if the jurisdiction(s) that did request the hearing does not file an opening brief.

The filing of the opening and reply briefs generally completes the pre-Board hearing briefing. However, if, *and only if*, the reply brief raises a new issue or argument, any other party may file a response brief with the Chief of Board Proceedings no later than 20 days before the Board hearing.

The Board's decision on the petition will become final 30 days after the date notice of the Board's decision is mailed to the petitioner(s) and notified jurisdiction(s) (and the taxpayer if it is a party), unless within that 30-day period a party to the petition files a Petition for Rehearing or the Board Chair orders the Chief of Board Proceedings to hold the decision in abeyance and notify all parties of the order. A Petition for Rehearing may be filed in accordance with the Rules for Tax Appeals (Regulation 5561).

Comment [LLW16]: Added information at the suggestion of Mr. Neil Shah.

The Board's final decision on the petition exhausts all parties' administrative remedies on the matter.

## LIMITATION PERIOD FOR REDISTRIBUTIONS

905.080

Redistributions (also known as reallocations) cannot be made of amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge. (RTC

section 7209, Reg. 1807(e).) It should be noted that this does *not* generally mean that the redistribution is limited to taxes incurred two quarters prior to the date of knowledge because this period is based on the date of *distribution*, not the date the tax was incurred, or the date the tax was remitted to the BOE. Generally, distributions are made the quarter following the period for which the tax is reported and paid. Taxes generally must be reported and paid by the last day of the month following the quarter incurred. Thus, the two-quarter limitation period for redistribution of local tax, which is based on the distribution date, allows redistributions of local tax *incurred* during the three quarters immediately preceding the calendar quarter of the date of knowledge.

For example, on March 15, 2008, City A files a petition for reallocation of local tax, asserting that in November 2006, a specific taxpayer who opened a business making over-the-counter retail sales in City A has not allocated any local tax to City A. AG issues a decision granting the petition based on its findings that petitioner is correct and that the taxpayer timely reported and paid local tax, but improperly allocated the tax to City B. The petition date, March 15, 2008, is the date of knowledge. Since that is in the first quarter 2008, the limitation period extends back two more quarters, to distributions made during the third quarter 2007. Since the local taxes for the second quarter 2007 were distributed during the third quarter 2007, pursuant to the decision of AG, local tax will be reallocated to City A beginning with the local taxes incurred during the second quarter 2007, beginning April 1, 2007. The local tax incurred by the taxpayer's location in City A for the periods prior to April 1, 2007 (i.e., November 2006 through March 2007) were reported and paid with the return due January 31, 2007, and April 30, 2007, and those taxes were distributed during the first and second quarters 2007, respectively, *more* than two quarters prior to the quarter of the date of knowledge. Therefore, reallocation of such taxes is barred.

The discussion above is based on the taxpayer's actual payment of tax when due. However, the BOE cannot distribute local tax until such tax is remitted by the taxpayer. Thus, where a taxpayer files a timely "non-remittance" return (without payment of the reported tax due) with all required local tax allocation schedules, there is no local tax revenue to distribute. When these funds are remitted, they will be distributed in accordance with the taxpayer's return, and it will be that date of actual distribution that is relevant for purposes of the date of knowledge analysis, *not* the date the tax was incurred. For example, using the same facts as in the prior paragraph except that the taxpayer filed a non-remittance return for the fourth quarter 2006 (November and December 2006), not paying that amount until June 15, 2007. The taxpayer timely paid the tax reported on all later returns. Thus, since the taxes incurred for the fourth quarter 2006 were not paid until June 2007, they were not distributed until the third quarter 2007, reallocation of such taxes is permitted for the date of knowledge in the first quarter 2008. However, since the taxes incurred for the next quarter (first quarter 2007) were distributed more than two quarters prior to the quarter of the date of knowledge (i.e., distributed during the second quarter 2007), reallocation of such local tax is barred.

The following schedule shows the remittance and distribution dates for a typical four-quarter period. The term "Remittance Date" means the date on which the BOE receives a taxpayer remittance. The term "Distribution Date" means the quarter in which the BOE makes payment of revenue to local jurisdictions. Distributions are made four times per year, on the first Friday of March, June, September, and December.

**Comment [LLW17]:** Staff deleted this sentence as unnecessary. Also, the actual distribution dates may vary year to year. However, staff posts the allocation calendar, which provides warrant/EFT payment dates, each year on the BOE website.

Remittance Date	Distribution Date
Feb. 13 – May 13	2 <sup>nd</sup> Quarter
May 14 – Aug 13	3 <sup>rd</sup> Quarter
Aug. 14 – Nov. 13	4 <sup>th</sup> Quarter
Nov. 14 – Feb. 12	1 <sup>st</sup> Quarter

#### **APPLICATION TO RTC SECTION 6066.3 SUBMISSIONS 905.090**

The procedures set forth above are in addition to, but separate from, procedures established under the authority of RTC section 6066.3. That section authorizes each jurisdiction to collect and transmit to the BOE information from persons desiring to engage in business in that jurisdiction for the purpose of selling tangible personal property. The information submitted serves as (1) a preliminary application for seller's permit, (2) notification to the BOE by the local jurisdiction of a person desiring to engage in business in that jurisdiction for the purpose of selling tangible personal property, and (3) notice to the BOE for purposes of redistribution.

Where a petition regarding suspected improper distribution of local tax is filed under the procedures established under Regulation 1807 and a submission is also made under RTC section 6066.3 for the same alleged improper distribution, only the earliest submission will be processed, with the date of knowledge established under the procedures applicable to the earliest submission. If multiple petitions are received for the same business, jurisdiction, and period that result in different fund transfers, the petitions would both be worked as separate petitions. The procedures set forth in subdivisions (b), (c), and (d) of Regulation 1807, which are discussed above, also apply to appeals from reallocation determinations made under RTC section 6066.3.

#### **KNOWLEDGE OF INCORRECT LOCAL TAX ALLOCATIONS OTHER THAN FROM PETITIONS BY LOCAL JURISDICTIONS AND REPRESENTATIVES 906.000**

##### **FIELD OFFICE RESPONSIBILITY 906.010**

As explained in CPPM 905.040, a BOE employee who discovers an error in the allocation of local tax should must record the date that knowledge of the error was obtained.

If an error in the reported allocation of local tax is discovered by the field office, the auditor or field staff should confine his or her report of the necessary redistribution to amounts originally distributed within the limitation period, as explained above, which generally consists of tax reported for the three quarters immediately preceding the quarter in which the error was discovered unless the field office file contains evidence of late returns and payments on billings, in which case, the extent of the limitation period should be determined based on the schedule in CPPM 905.080. If there is any question regarding the extent of the limitation period, the auditor or field representative should contact AG for assistance ~~report only tax for the aforementioned three quarterly periods and depend on headquarters' review for notification if additional information is needed. However, e~~ Every effort should be made to determine all amounts to be redistributed during the original field investigation. For additional instructions regarding Form BOE-414-L Auditor's Work Sheet Local Sales and Use Tax Allocation, see Audit Manual 0209.00.

##### **HEADQUARTERS RESPONSIBILITY 906.015**

Redistributions in Headquarters will be subject to the same review as redistributions that are received from field offices.

**Comment [LLW18]:** The prior text of this section stated that duplicate inquiries will not be processed. And, a subsequent inquiry will not be considered a duplicate inquiry when that subsequent inquiry does not contain the same reasons for error as in another inquiry for the same taxpayer by the same city. MuniServices asked why this definition of duplicate inquiry was deleted.

The section was revised to the current text to explain what would happen if duplicates were received. Staff added this additional sentence for further clarification.

**Comment [LLW19]:** Added as suggested by MuniServices.

**Comment [LLW20]:** Revised based on comments from AG. AG would prefer to resolve issues at the time they are discovered in the field.

**Comment [LLW21]:** To confirm that section 7209 applies to non-audit adjustments discovered in an audit, MuniServices recommends adding, "The limitation period for adjustments that are not audit adjustments, i.e., deficiencies or refunds, is controlled by section 7209 of the Bradley Burns Local Sales and Use Tax law."

Staff response: Staff does not believe that the suggested revision is clear. However, staff added "the reported" in the first sentence to address MuniServices concerns.



### Allocation Group (AG)

In general, AG will make all redistributions of local tax and district taxes as a result of petitions from jurisdictions or their authorized representative, submitting on behalf of the jurisdiction. AG has the responsibility to examine all reports of errors in distribution that are received from field offices (BOE audits, reaudits, field billing orders, petitions from jurisdictions, and submissions under RTC section 6066.3) and verify by an examination of the master file, or any other records in Headquarters, that the report includes all amounts within the limitation period. If this examination discloses that the limitation period extends beyond the point covered by the report and information regarding the amount to be redistributed cannot be determined from the records in Headquarters, the necessary additional information will be requested from the field office.

Comment [LLW22]: Added at the suggestion of MuniServices for clarity.

### Local Revenue Allocation Unit (LRAU)

LRAU handles redistributions of local tax and district taxes discovered during reviews of returns, as well as redistributions resulting from corrections to the Tax Area Codes, exclusive of excluding redistributions resulting from BOE audits, reaudits, FBO's field billing orders, petitions from jurisdictions (see CPPM 905.000), and submissions under RTC section 6066.3 (see CPPM 905.090). LRAU processes all field audit redistributions of district taxes submitted by field offices.

Comment [LLW23]: Revised based on suggestion from MuniServices.





December 19, 2011

Via electronic mail

[Dave.rosenthal@boe.ca.gov](mailto:Dave.rosenthal@boe.ca.gov)  
[Lynn.whitaker@boe.ca.gov](mailto:Lynn.whitaker@boe.ca.gov)  
[Leila.hellmuth@boe.ca.gov](mailto:Leila.hellmuth@boe.ca.gov)

Subject: Proposed Revisions CPPM Chapter 9: MuniServices' Comments and  
Suggestions in Response to Interested Parties Meeting December 1, 2011.

To whom it may concern:

MuniServices has reviewed the proposed revisions to State Board of Equalization (Board) CPPM Chapter 9 as forwarded in preparation for the December 1, 2011 meeting and appreciates the opportunity to provide further comments. The following are submitted in the continued spirit of dialogue, as with previous communications on this matter.

**1. The Date of Knowledge (DOK).**

We appreciate the suggested revision in CPPM section 905.040 defining when staff has “operationally documented” a potential misallocation. However, it is imperative that the BOE staff be held to the same requirements for establishing a DOK as are the jurisdictions and their consultants. At a minimum this would include information required in Regulation 1807 (a)(3)(E) & (G). The jurisdiction(s) involved should also be identified. **Suggestion/comment:** We suggest that the following language be added to Section 905.040: “...(2) the Board employee questions and documents that suspected erroneous allocation. Such documentation must include contacting the taxpayer to establish that there is a basis for questioning the reported allocation, and the information required for a petition under Regulation 1807 that supports the probability of a misallocation.”

Furthermore, under section 906.010, it should be mandatory that an employee record the date of knowledge. **Suggestion/comment:** Therefore, we ask that you delete the discretionary “should” in the first paragraph and replace it with “must”.

**2. Forms BOE-549-L (long form) & BOE-549-S (short form).**

The stated reason for limiting use of the short form is to speed up the initial petition review process by segregating the TAC changes. As noted, however, at the first interested parties meeting, both MuniServices and HdL already segregate their TAC petitions. Therefore, there is no need to limit the use of the short form to TAC changes. From the comments at the Interested Parties meeting on December 1, 2011, we understand that BOE staff's position is now to keep the use of the forms basically as they are, but might consider additional fields on the forms to allow for providing more information.

**Suggestion/comment:** MuniServices agrees with this position but only if the additional fields are optional. We do not support any attempt to expand the requirements for a petition beyond those required in Regulation 1807. Historically MuniServices has provided all the information required by Regulation 1807 plus whatever other information it has in its possession regarding the claimed misallocation and will continue to do that.

### **3. Threshold (905.020)**

**Suggestion/comment:** The threshold minimum of \$50 per quarter should not be raised to \$250. The effect of multiple period corrections less than \$250 per quarter on a small city can be significant and therefore we oppose this increase.. Additionally, to protect small jurisdictions there should be cumulative threshold as well of perhaps \$500. So, for example, if there is a multiple quarter adjustment and the total of all quarters is greater than \$500 then the reallocation needs to be done regardless of the individual quarterly amounts.

### **4. Revisions to AG Training Materials**

One of the proposals is to “Formalize the guidelines for contacting taxpayers.” The purpose of this is to explain when the Allocation Group (“AG”) auditor should discuss the case with the AG lead and/or the AG supervisor and determine how to proceed on cases where the taxpayer is uncooperative in providing records or when records do not exist. Discussion of a case with the unit lead or supervisor is always a good thing, especially when the auditor is unsure how to proceed on a case. But it is not sufficient. The jurisdiction may be looking for other or additional facts and does not have the proverbial “stick” to get the answers, whereas the Board does.

#### **Suggestion/comment:**

- (1) We suggest language requiring the AG to forward to the taxpayer questions we submit to AG in writing.
- (2) We also suggest that typical questions that an auditor should ask be included in then AG manual. Our suggestion is not to establish a checklist that is required to be asked in every case, but rather to provide sample questions that serve as a guideline and training material for auditors to make sure that all pertinent information is obtained as early as possible. Examples of such questions could include: What type of business is the taxpayer engaged? How does the taxpayer solicit sales? Does it use outside sales people? Does it take orders via telephone or on-line? If the goods are delivered from outside California, does the contract of sale include specific title clauses, or F.O.B. provisions? The training materials should also include the reasons why this information is vital in resolving a petition.

### **5. Notification to Jurisdictions for Large Deallocations.**

MuniServices favors this change, which was suggested by HdL. **Suggestion/comment:** We also suggest that this notice also be triggered by large deallocations resulting from refund claims. This would be particularly advantageous to jurisdictions for refunds resulting from lender’s bad debts, which are typically large. We would further suggest that language requiring this notice also indicate that the notice be sent to the authorized representative of a jurisdiction.

## 6. New Manual for Local Tax Information

MuniServices believes that it would be advantageous to have all information pertaining to local tax in one source document. **Suggestion/comment:** That manual should include the information that is currently in Chapter 9 of the CPPM, as well as the Allocation Guidelines in Exhibit 5 of Chapter 5 of the CPPM, plus any other information such as applicable tax rates for each jurisdiction in the State. While links to the different source materials can be put on the Board's website, it is easier to find for both staff and other parties if all the material is in one manual.

## 7. Access to Records

In sections 901.020 and 901.040, Staff has inserted language limiting the right of jurisdictions and their consultants to view records to only taxpayer records of the jurisdiction the person represents. As you know, the Attorney General, in an opinion issue in December 1998 has already interpreted the statutory permission in 7056 to be broader than this. Specifically, that opinion, No. 98-814, concludes that "the duly authorized representative of a city may examine *all the sales and use tax records of the State Board of Equalization relating to the board's determination of the amount of local sales and use tax revenues to be distributed by the City.*" (Emphasis added). **Suggestion/comment:** We object, therefore, to this language and request that it be stricken and request that the Board allow the access rights as noted in the Attorney General's opinion.

Additionally, in section 901.060, Staff have removed our current right to have a print-out from IRIS and ACMS and replaced it with a requirement that we "record" the information from the screen ourselves. Please explain the rationale for this change.

## 8. Copies of Contracts as Pre-requisites for Data Access.

In a number of sections, including section 901.020, 901.030, 901.040, and 905.010 (in the second full paragraph), Staff have inserted a requirement that we provide a copy of the contract with the jurisdiction before the representative may access the data. There is no authority for adding this requirement.

**Suggestion/comment:** We will be happy to continue to provide you copies as a matter of courtesy but there is no authority to require contract access, certified copies of contracts as prerequisites to access or for Staff to exercise the judgment that the contract meets the unspecified "administrative criteria" noted in 901.020.

## 9. Follow-up on Outstanding Cases.

In section 905.050, The AG has committed to following up on aging cases, which we believe is a good step toward speedier resolution of cases. But the AG's suggestion is to follow-up after the 180-day trigger-date for us to bump a case to the next level. **Suggestion/comment:** We suggest the initial follow-up occur at least before the end of that six-month period, perhaps at 150 days.

## 10. Technical Clarifications.

- a. 901.010. The term "district tax" is not otherwise defined.

**Suggestion/comment:** Therefore, we suggest the following change in the first paragraph of this to clarify its use: "...imposing taxes under the Transactions and Use Tax Law (RTC section 7251, et seq.) ("district taxes"), to view..."

- b. 905.010. In subparagraph five, the last sentence seems incomplete.

**Suggestion/comment:** We suggest adding "must be submitted" to the end of the sentence to complete it.

- c. 905.010. **Suggestion/comment:** Please replace the phrase “when it is available” with the less ambiguous “as soon as it is available”.
- d. In sections 905.020 and 906.015, you have deleted reference to the consultant as a party who can submit a petition. While we understand the desire to delete the IJC definition, we would like there to be no misunderstanding that consultants remain authorized to submit petitions on behalf of jurisdictions. **Suggestion/comment:** Accordingly, we ask that you amend the language to state “...the petitioning jurisdiction or its authorized representative, who is submitting on behalf of the jurisdiction.”
- e. **Suggestion/comment:** Please insert the following at the end of 906.010 to confirm that the limitations period of section 7209 continues to apply to non-audit adjustments discovered during audits. “The limitation period for adjustments that are not audit adjustments, i.e. deficiencies or refunds, is controlled by section 7209 of the Bradley Burns Local Sales and Use Tax law.”
- f. 906.015. The phrase “exclusive of” is unclear. **Suggestion/comment:** We suggest it be replaced with “excluding redistributions resulting from...”

## 11. Requests for Clarification.

- a. 905.010. Staff has replaced the term “improper distribution” with the undefined term misallocation. **Suggestion/comment:** Please clarify why.
- b. 905.000. We are fine with applying these rules to District Tax misallocations as noted in 905.000. However, it is not clear whether Staff intends to apply these rules to district tax deficiencies as well. **Suggestion/comment:** Please clarify the intent.
- c. 905.010. The changes in this section regarding notice to jurisdictions are unclear. The language indicates that the jurisdiction will be notified when the threshold amount is equal to or less than the total amount from the pool. **Suggestion/comment:** Please clarify. It would seem to us that the notification is triggered if the amount being taken from the city’s share of the pool is equal to or greater than the threshold amount and not the opposite as listed in the example.
- d. 905.030. We support the 30-day timeline for perfecting a petition. The CPPM is, however, unclear about what happens if the AG does not send the petition back within 30 days. **Suggestion/comment:** We recommend that if that happens, the Petition be deemed to be accepted for purposes of establishing a DOK.
- e. 905.060. New language regarding the return of a case to the appeals division after LAG investigation does not specify what rights the jurisdictions have after report of further investigation has been delivered to the Appeals Division. **Suggestion/comment:** Is it the Staff intent to give us an opportunity to submit a response to such a report?
- f. 905.060. **Suggestion/comment:** Please clarify under what authority Appeals Division may issue an SD&R after the D&R has become final.
- g. 905.090. Prior versions of this section included the following: “A subsequent inquiry will not be considered a “duplicate inquiry” when that subsequent inquiry does not contain the same reasons for error as in another inquiry for the same taxpayer by the same city. **Suggestion/comment:** Please explain why you deleted the definition of a duplicate inquiry that is currently in this section.

Once again, we most appreciate the effort by Board staff in terms of drafting the proposed revisions to Chapter 9 and we thank you for the opportunity to comment. We believe that our suggested changes are within the spirit of this fine effort and will help to ensure that the process is transparent and is fair and equitable for all parties involved. We look forward to working with staff and members to continue to refine the process and content as it relates to CPPM Chapter 9.

Respectfully submitted,

A handwritten signature in blue ink, reading "Eric Myers".

**Eric Myers, Esq.**

**Director, Local Tax Strategic Development/Assistant Subsidiary Counsel**

A handwritten signature in black ink, reading "Robert J. Wils".

**Robert J. Wils**

**Senior Local Tax Advisor**

cc:

Janis Varney

Fran Mancia

Carrie Toomey



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December 19, 2011

Lynn Whitaker, Policy Program Specialist  
State Board of Equalization  
P.O. Box 942879  
Sacramento, CA 94279

Re: Proposed BOE Manual Revisions

Dear Ms. Whitaker:

Thank you for the opportunity to respond to the proposed changes to Board of Equalization, Compliance Policy and Procedures Manual (CPPM) Chapter 9, Miscellaneous.

We have reviewed the staff report for improvements to the Local Tax Petition Procedures and have outlined our suggestions and comments below:

**FORMS BOE-549-L AND BOE-549-S**

The HdL Companies uses the BOE 549-S exclusively and segregates TAC petitions prior to submitting. We began doing this several years ago in response to a request from the Allocation Group. We feel the short form is sufficient for all types of petitions. More complex cases usually require documentation that can be attached to the petition. The existing form could be more efficient and any revisions should include the following fields:

- Date
- Email address for taxpayer contact
- Assessor's Parcel Number (for TAC petitions)
- A check box to indicate that additional documentation has been attached
- Contact information for IJC or party submitting the petition

We suggest removing the following fields:

- SECTION II -- QUESTIONS ABOUT THE BUSINESS

HdL includes detailed information about the retailer in the "REASON FOR QUESTIONING THE ALLOCATION" section at the top of the form and we include the dates of operation (if applicable) and former business addresses. Eliminating "Section II" would allow space to expand this information.



Because HdL has the Board of Equalization form hard-coded into our software system, we would appreciate being included in further discussions about any revisions, and ask for sufficient lead time to incorporate any changes.

#### **THRESHOLD FOR MANUALLY PROCESSING FUND TRANSFERS**

HdL disagrees with staff's proposal to change the minimum threshold for processing fund transfers from \$50 to \$250, which amounts to a 500% increase. Staff does not believe it is "cost effective" to process changes for small amounts. HdL has suggested an alternative amount of \$100 per quarter. We want to encourage efficient use of staff time, but continue to be concerned about the cumulative effect of the \$250 per quarter amount proposed by staff.

HdL has internal thresholds in place and we do not submit petitions for amounts less than \$50. Staff has suggested implementing an alternative that would place a threshold "cap" when adjustments total a certain amount. We will reserve comment on this alternative until staff has provided more detail.

A brief explanation of the time involved in processing manual adjustments was provided at the December 1, 2011 Interested Parties meeting. We ask that staff provide more information about the process and the actual time involved.

#### **NOTIFY JURISDICTIONS PRIOR TO PROCESSING A LARGE DEALLOCATION**

Currently, BOE staff sends a notification letter to a jurisdiction that will be negatively impacted as the result of a local tax petition. There is no process in place that provides any notice when a deallocation occurs as the result of an audit or refund. While deallocations from an audit or refund are not subject to appeal or mitigation, they often result in huge, unexpected deductions from that jurisdictions' budgeted local tax revenue.

We proposed that Board staff implement a procedure that sends an advisement notice for any pending refund or audit deallocation of \$10,000 or more in local tax. A more detailed description of the steps involved in processing a refund would be helpful in proposing a timeline.

#### **DATE OF KNOWLEDGE ISSUES**

Section 905.040 suggests revised language to the CPPM for operationally documented dates of knowledge. Two conditions are required:

- (1) An employee of the Board discovers factual information sufficient to support the probability that an erroneous allocation of local tax may have occurred, and
- (2) The Board employee questions and documents that suspected erroneous allocation.

It has been our recent experience that BOE staff has a subjective view as to what constitutes a complete petition and/or evidence. To ensure that the standards for a date of knowledge and documentation are the same for BOE staff and any jurisdiction or consultant, we ask that the term "evidence" be defined in Section 905.010 as follows:

"Evidence" includes any documentation or information sufficient to support the probability that an erroneous allocation of local tax may have occurred.

#### **REFERRING A PETITION TO A FIELD OFFICE/FIELD AUDITOR**

Referring a petition out to a field office for incorporation into a field audit should always be seen as a last resort. Allocation Group auditors should continue make efforts to obtain the local tax information even after a petition has been referred to a field office. Audits sometimes take years to complete, and we are aware that the local tax issues are not the priority. We have seen cases where an audit was completed, and the auditor did not investigate the local tax issues because of time constraints.

#### **NEW MANUAL FOR LOCAL TAX PROCEDURES**

As discussed at the December 1, 2011 Interested Parties meeting, HdL supports the idea of a separate local tax manual. We would also encourage staff to make a .pdf version of this manual available on the Board's website.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'R Sturdivant', with a stylized flourish at the end.

Robin Sturdivant  
Local Government Advocate

RLS:ppl





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SAN JOAQUIN

December 14, 2011

Ms. Lynn Whitaker  
Business Taxes Committee Team  
California State Board of Equalization

Dear Ms. Whitaker,

I am writing to you on behalf of the San Joaquin Council of Governments/San Joaquin County Transportation Authority. We have been informed that Board Staff is proposing to raise the threshold for manual corrections from \$50 per quarter to \$250 per quarter. We oppose such an action. While these amounts may seem trivial, they are important to us.

Furthermore, we do not believe that the State Board of Equalization, which administers this tax by agreement, has unilateral authority to impose or alter such a threshold. We ask you to table this proposed change and to hold full hearings on why such a change is necessary.

Sincerely,

A handwritten signature in blue ink that reads "Steve Dial".

STEVE DIAL  
Deputy Executive Director/Chief Financial Officer